

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v.- : 13 Cr. 268 (JMF)

JUSTIN SMITH, :

Defendant. :

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THE GOVERNMENT’S SENTENCING MEMORANDUM

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December 26, 2013

BY ECF

The Honorable Jesse M. Furman
United States District Court
Southern District of New York
40 Foley Square, Room 2202
New York, New York 10007

Re: United States v. Justin Smith,
13 Cr. 268 (JMF)

Dear Judge Furman:

The Government respectfully writes in advance of the defendant's sentencing, currently scheduled for January 7, 2014 at 3:30 p.m.

The Offense Conduct

Justin Smith, who is a professional gambler, engaged in two basic types of illegal conduct. (Def. Mem. 3-4, 7-8). First, Smith assisted co-conspirators Hillel Nahmad, a/k/a "Helly," and Illya Trinchler's illegal gambling operation by providing them with accounts at various sports gambling websites that were operating illegally in the United States, such as pinnaclesports.com. These accounts were used by Nahmad, Trinchler, and others, in part, to lay off bets that their sportsbook had received from clients. For example, during a March 15, 2012 phone call intercepted on a wiretap, co-conspirators Illya Trinchler and David Aaron, an employee of Trinchler's and Nahmad's sportsbook, discussed Smith setting up such accounts:

IT: Did you see that Justin sent a bunch of accounts over?

DA: I am sorry?

IT: Umm, Justin Smith, he emailed a bunch of accounts to HMS Sports that we can use.

DA: Ahh, no, I didn't see that.

IT: Ahh, do you know HMS?

DA: The guy that does [REDACTED], this is the guy that does [REDACTED] accounts?

IT: Ahh yeah, [REDACTED], it's under [REDACTED], [REDACTED] emailed a bunch of accounts so go through the ahhh...

DA : Which [UI] the account did he send it to, The Best or?

IT: HMS [UI] and then text me how many accounts total he gives, ok?

DA: Umm, he actually texted something I wanted to ask you about or he said that his accounts are now under a free roll package. Do you know about that?

IT: Yeah, there always under a free roll package only one... [UI]

DA: He made it seem like it was a new thing, ok.

IT: Yeah, alright.

DA: Alright, I'll add these in.

IT: Yeah and text me how.

On February 16, 2012, Illya Trincer spoke with Smith about getting shut out of certain online betting accounts in advance of the 2012 Super Bowl:

JS: Hey.

IT: Hey, um, ok...So I just, uh, like, looked through it with Hirsch. So basically, I've settled that Mexican account, based on what we have done and the last two weeks. Before...remember they shut us down before Super Bowl, like five weeks or four weeks before Super Bowl, they shut... We couldn't get back open?

JS: Yup.

IT: Now last week, we won ten dimes. I was like we won on a Monday night play. The (gown) was actually broken, but the good month, like something we won on a Monday night. It was a teaser. I think it was like a winning. It was a like a teaser that we won or something. And the week before that we lost like, uh, 107 or something. Those two weeks are the only two weeks that I have, that I haven't settled up until this point. Every other week I have that I either paid in full or collected in full. (pause) So, like uh, it was like, it was like, it was like 97 thousand that I did not settle, basically because I, we won ten and lost 107.

JS: And you.....what's 40% of 107200. One second, Illya.

IT: But we lost 107; we didn't win 107. We lost 107.

JS: Yea, I know, ok, uh so the time when you lost 107-200, I paid for you, right?

IT: I believe that's what happened.

JS: Yea, I have that, that's how I have it marked down. I paid 42,880 for you, uhh.

IT: Yea, 42,880, ok?

JS: And then what other week, uhhh.

IT: Next week we win ten thousand and I was owed four thousand. I guess would be the way you do it.

JS: Umm, yea, that that that looks right.

IT: And then every other week, I have, I've paid for myself.

JS: Uh yea, I believe so...that's what it looks like.

IT: Ok, ok, so let's um, let's assume, uh. How much do you want me to send to the Mexican's tomorrow?

JS: How much do I want you to send to the Mexican's tomorrow? Um, the whole thing, preferable.

IT: Ok, so I'll send the whole thing, ok? So I'm gonna put into the account that I sent the whole thing already, just so it's easier, alright? I'm gonna send it in the morning and then now you go over numbers with Hirsch and um...there's a couple payments...you paid me. You remember you gave me like, you gave me three wires, you gave me, you gave me, right? You gave me 120 came in.

JS: Yea, I gave you 120, I gave you 50 and 62,684.

IT: Yup.

UM: And I think that might be it.

IT: Yea, that's it, those three wires, so just give those Hirsch, give Hirsch those transfers.

IT: [Speaking to John Hirsch] Call Justin, right now and he, you can go over the numbers with him, ok?

JH: [Speaking to IT] Alright.

IT: Hello?

JS: Um, there's a few other, uh, numbers from before the Mexican account that you and I did.

IT: Like?

JS: Uh, when [REDACTED] (ph) came in town, I, uh, you had pieces of me and stuff.

IT: When what?

JS: When [REDACTED] (ph) came into town, you had pieces of me and stuff, the very first time?

IT: I'm thinking, the other transfers...Hirsch has them...um I, so I think he's...you've gone over numbers with Hirsch, couple times, right?

JS: He's got poker numbers?

IT: No, no, no, not poker numbers. I'm saying the sports numbers.

JS: Yea, but I'm saying, uh, are we gonna hold off for poker numbers another time?

IT: Wait so, so yea, I'm just doing the sports, what, what, what poker numbers you talking about? I'm sorry, one more time?

JS: I have it listed as, um I owed you 21,420 and then you owed me 13-7 and then I owed you 10-50, 773, and that's it.

IT: Ok, yea, just to, yea, separate my poker number, like the poker stuff and whatever I do with you, like separate this is just the sports, just, so just what you've done.

JS: Yea.

IT: That's, I don't want to get it confused, cause then I have to pay the company, it's too complicated to do everything at once.

JS: Right, right, ok.

IT: [Speaking to Hirsch]: Alright Hirsch, so call uh...

IT: He's gonna call you right now, ok, Justin?

JS: Alright, bye.

IT: Alright.

Second, Smith accepted and made gambling payments for Illya Trincher. (Def. Mem. 7-8). For example, on February 22, 2012, Trincher and another defendant, Abe Mosseri, discussed having Justin Smith use Mosseri's Las Vegas account.

IT: Hey brother, quick question for you....um. Some guy is supposed to give me some money in Vegas. Can I give, can I just have him put in your account?

AM: Yeah, yeah, yeah. That's fine.

IT: I think Justin, you know Justin Smith.

AM: Yeah, yeah, but just tell him when he does that, to give it to Matt.

IT: Matt, floor man, yeah he knows.

AM: Not to go directly to the thing, give it to the floor guy. Yup, that's fine, I...

IT: I will tell, I don't know what it is, but whatever the difference is I am going to put the difference into your Pinnacle account, maybe like 80.

AM: Tell him...

IT: I will text you as soon as it is done.

AM: Yeah, text me the amount, yeah exactly.

IT: Perfect, alright.

AM: Alright, thank you.

Also by way of example, on May 21, 2012, Trincher spoke to a client of his sportsbook, [REDACTED], about Trincher paying the client in Las Vegas:

IT: Can I pay you in Vegas?

[REDACTED]: Yeah.

IT: I have Justin Smith out there. Do you know Justin Smith?

[REDACTED]: Yeah.

IT: Justin Smith will be in Vegas and might be in the tournament but has money that he can give to you. Does he have your number?

[REDACTED]: Yeah, yeah, yeah.

IT: Okay, I will pay you whatever.

cc: Mark MacDougall, Esq. (by ECF)
Samidh Guha, Esq. (by ECF)